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THE NATURE OF ORGANIZED COOPERATION

Cooperative enterprise has developed out of the needs of the common people. It can succeed only to the extent it satisfies the people's needs better than some other form of enterprise.

Where individual initiative or the ordinary business corporation does a satisfactory job of supplying particular needs, a cooperative will find it difficult to compete. But whenever any group of people has an existing need in common which neither the government nor private enterprise stands ready to meet, or which is being met inadequately or at a cost that seems excessive, the group has the legal and moral right to set up and operate its own enterprise to supply its own need.

It is in this sense that a cooperative may be termed a self-help enterprise. By means of mutual self-help on an organized basis the participants hope to meet their common need more effectively than each one could expect to do it on his own.

When people join in such an organized cooperative effort, they must agree on the principles which are to determine the functioning of the organization and they must establish rules under which it can operate in an orderly manner. The rules should be so designed as to facilitate the carrying out of the principles on which the enterprise is based.

The cooperative principles that have found world-wide acceptance are all implied in the very purpose of

cooperative organization, which is for people in need of certain services to operate their own enterprise to furnish those services to themselves. This holds true regardless of whether the service required is processing and marketing of agricultural products, purchasing of home or farm supplies or gasoline and automobile accessories, provision of housing facilities, of medical care, of burial services, of fire insurance, of credit facilities, of telephone service or of electric service.

It is obvious that a cooperative, owned and controlled by the very people whom it serves, is essentially a non-profit enterprise. Its main objective is service. This consideration leads to two of the "cooperative principles". First, invested capital is entitled to no profits but only interest at a reasonable rate. Capital in a cooperative is merely a means to an end; it is hired at a wage, just like labor. Second, all benefits accruing from the operation of the enterprise belong to the members, whose patronage has created these benefits in proportion to their respective patronage. The more a member makes use of the service of his cooperative, the more benefit he gets from it.

It is also obvious that a cooperative must be democratically controlled if it is to achieve its purpose of functioning in the best interest of all of its members. This principle applies in a cooperative, which is an economic democracy, just as in our political democracy where each citizen is entitled to one vote. Each cooperative member has one vote and no more, regardless of the amount of his investment in or patronage with the cooperative. It is not money, but men and women who control a coopera-

tive enterprise.

Since the purpose of a cooperative is to serve its members at the lowest possible cost consistent with good service, cooperatives find it desirable to extend membership to all persons who are in need of the services offered and wish to participate, regardless of religion, race or political affiliation. Also, the conditions of membership are made as easy as possible, so as to give anyone an opportunity to join. The more people participate, the greater will be the operating economies and, consequently, the benefits to each participating member.

Another generally accepted principle is that of operation on a cash basis. Cooperatives have come to this principle as a result of bitter experience. During the early years of the cooperative movement, the extension of credit was one of the major causes of cooperative failures. Even at best, credit business is more expensive than cash business. Cooperators consider it unfair for the members who pay cash for goods or services to have to carry the burden and the risk occasioned by members who expect the cooperative to serve them on a credit basis.

In order to make democratic control by the members effective, a cooperative must have well-informed members who understand the nature of cooperative enterprise, know how to function cooperatively, are familiar with the problems concerning their particular enterprise and take an active interest in its growth and success.

This necessitates a continuing process of education of the members, not formal class room education, but self-education which is acquired through discussion at meetings, reading of informative literature, study of the reports of the cooperative board and management, etc.

Also, if a cooperative is to grow, it must educate the community at large

to an understanding of the nature and objectives of the cooperative, so that people will learn of the benefits to be gained and will become members of the cooperative and users of its services.

To summarize, the principles discussed above may be restated very briefly in the rearranged order in which they are usually listed in cooperative literature:

1. Open membership.
2. Democratic control; of one member, one vote.
3. No profits to investors, only a fixed rate of interest for the use of capital.
4. Return of gains to the members in proportion to their patronage.
5. Political, religious and racial neutrality.
6. Cash trading, no credit business.
7. Education in cooperation.

In addition to the observance of these seven principles, there are certain other practices and methods that are generally adhered to by well-functioning cooperatives.

(To Be Continued)

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Erratum: The third sentence of the first paragraph in the left column of page 91 of the November issue should have read: "It emphasizes the idea of personal participation of the members as against the participation and control of capital in the profit corporation."

REA LAW JOURNAL

A review of that portion of the law important and interesting to attorneys working in the field of rural electrification.

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Address suggestions and contributions to the Editorial Office, REA, Room 203, 1518 "K" Street, Washington, D. C.

RECENT CASES

Damages - Right of Municipality to Recover Damages for Delay in Construction of Municipal Electric Plant Arising from Injunction Suit Brought by Private Power Company.

Private power company obtained a temporary injunction, upon posting an injunction bond, to restrain a county from using PWA funds in constructing a proposed power plant. The injunction was dismissed by the United States Supreme Court, and the county now sues the private power company for "restitution of the profits" which it has lost and the company has gained as a result of the two year delay in the construction of the project. Held, recovery denied. Greenwood County v. Duke Power Co., 7 U. S. L. Week 551 (C. C. A. 4th, November 6, 1939).

The court states that restitution is awarded upon the principle that a party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of a reversal, to be restored by his adversary to that which he has lost thereby.

It cannot be awarded here, holds the court, because the county has lost nothing which the power company has received as a result of the injunctive orders of the court. The private company had a right to sell current, and therefore took away nothing that belonged to the county. On this point, the court is in conflict with the Supreme Court of Iowa, which held in City of Corning v. Iowa-Nebraska Light & Power Co., 282 N. W. 791 (Iowa, 1938), (1939) 1 REA L. J. 24, that a municipality was entitled to recover damages for delay in construction of a power plant from a private power company which had caused the delay by obtaining an injunction which was dismissed by a higher court.

On the point of damages, the court states that ~~there~~ were other obstacles in the way of the county's recovery, since the damage itself is too speculative to be recoverable. The Iowa court, on the other hand, in sustaining an award of damages ruled that since in that case the municipal plant had already been in operation for a year when the damage suit was instituted, the profit made during the first year of operation was evidence of the amount of loss suffered by the municipality by the delay. The state court was careful to point out that if the plant had not yet been in operation and was an untried enterprise, the damages might be too speculative for recovery. In the instant case this seems to have been the fact, so that the two cases are not in conflict on the damages issue.

Municipalities - Power of Nebraska Municipality to Purchase Property and Franchises of Private Company in Another City and to Serve Inhabitants Therein.

Nebraska statute provides that a city may own and operate an electric light and power plant and distribution system and may "extend the same beyond its boundaries, and for that purpose is hereby authorized and empowered to construct, purchase, lease, or otherwise acquire, and to maintain, improve, extend

and operate electric light and power plants, distribution systems and transmission lines, outside of the boundaries of such city, village, or public electric light and power district, for such distance and over such territory within the state as may be deemed expedient". A Nebraska city purchased the distribution plant and franchise of a public utility in another city, and rendered service to the inhabitants thereof. Held, the statute authorizes such action by a Nebraska city. City of Curtis v. Maywood Light Co., November 17, 1937, 7 U. S. L. Week 627, December 5, 1939.

ADMINISTRATIVE INTERPRETATIONS

Wyoming - Attorney-General Rules Wyoming Cooperatives Not Subject to Sales Tax.

Using as a basis the holding of the Supreme Court of Wyoming in State Board of Equalization v. Stanolind Oil & Gas Co., 94 P.(2d) 147 (Wyo. 1939), (1939) 1 REA L. J. 93, the Attorney-General has ruled that REA cooperatives are not subject to the Wyoming Sales Tax since they are not public utilities. This opinion reverses the former ruling of the Attorney-General to the contrary, (1939) 1 REA L. J. 88, and is in accord with the conclusion reached by the REA Legal Division, (1939) 1 REA L. J. 93. Op. Atty. Gen., October 25, 1939, and November 6, 1939, Prentice-Hall, St. & Loc. Tax Serv., Wyo., Paras. 23,045 and 50,006, Nov. 28, 1939.

LEGAL MEMORANDA RECEIVED IN NOVEMBER

A-128 Recordation of Pennsylvania Easements the Execution of Which is Proved by One or More of the Subscribing Witnesses

A-132 Power of Tennessee Electric Membership Corporation to Enter

Into and Perform Obligations Under an Installation Loan Contract

TAX MEMORANDA

T-191 Taxation of Municipalities and Counties in Tennessee with Specific Reference to Tennessee 28A Henry and Tennessee 29 Weakley

T-186 1939 Amendments to the Social Security Act

REVIEWING THE LAW REVIEWS

4 Mo. L. Rev. No. 4 (Nov. 1939) is devoted to a review of "The Work of the Missouri Supreme Court for the year 1938." Of particular interest is the discussion beginning on page 423 of Lustenberger v. Sarkeson, 343 Mo. 51, 119 S.W.(2d) 921 (1938) which holds that a trustee of a deed of trust in lieu of a mortgage does not obtain "title" to the property.

Packel, What is a Cooperative? (1939) 14 Temp. L. Q. 60. An interesting and stimulating discussion of the normal attributes of a cooperative as that form of enterprise has been defined in the courts.

Chattel Mortgages - Effect Upon Interim Creditors Where Chattel Mortgage is Filed a Few Days After Execution.

Mortgagor received a purchase money mortgage covering some automobiles in return for selling the automobiles upon credit to the mortgagor. Michigan statute states that chattel mortgages shall be "absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers or mortgagees in good faith, unless the mortgage or a true copy thereof shall be filed" in the proper places. The mortgagee did not file the mortgage until three days after its execution. In the interim credit was extended to the mortgagor by X. The mortgagor went bankrupt, and the mortgagee seeks to obtain the status of a secured creditor ahead of X, who is an unsecured creditor. X contended that the entire chattel mortgage was void since it had not immediately been filed. Held, to the extent X gave credit to the mortgagor in the interim period, X and the mortgagee will be on equal terms, but as to the credit extended after the filing of the mortgage, the mortgagee's claim would be superior. General Motors Acc. Corp. v. Collier, 106 F.(2d) 584 (C.C.A. 6th, 1939).

The court stated that rather than get involved in questions of reasonable time, the statute should be construed to require immediate filing if a mortgagee desires to avail himself of the immediate protection offered by the statute. However, the court stated that the failure to file immediately would have the effect of making the mortgage void only as to interim parties and only to the extent of their claim acquired during such period.

LEGAL MEMORANDA RECEIVED IN DECEMBER

949 Supplemental Memorandum to "Use of Administrative Funds to Pay for the Preparation of REA Films"

A-120 Supplemental Memorandum to "Liability of Landowner for Negligent Construction or Maintenance of Power Lines in Easement Which He Has Granted"

A-122 Supplemental Memorandum to "What Constitutes a Proper Signature By a Government Official?"

A-123 Reclassification of Rural Electrification Administration Employees During the Present Fiscal Year.

A-124 Service to Non-Members by Illinois Refrigeration Cooperatives

A-125 Need for Expunging Invalid Stock in Trade Provision in New York Mortgages

A-126 Requirement of Certificate of Public Convenience and Necessity for Construction of an Extension by a South Carolina Public Utility

A-127 Problems in Respect to Proposed Loan to Thief River Falls Municipal Plant (Minnesota) for Enlargement of Plant to Provide Service to Consumers Outside City

A-128 Recordation of Pennsylvania Easements the Execution of Which is Proved By One or More of the Subscribing Witnesses

A-129 Authority of Vice President in Illness of President to Execute Note Which President Has Been Authorized to Execute

A-130 Effect of Rules of Guidance for Procedure of Public Service Commission Enacted By State Legislature

A-131 Power of Texas Marketing Association to Become a Member of Texas REA Cooperative

A-132 Power of Tennessee Electric Membership Corporation to Enter Into and

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| <p>Perform Obligations Under an Installation Loan Contract</p> <p>A-133 Solicitation of Funds by Government Employees for J. D. Ross Safety Award Committee</p> <p>A-133-a Use of REA Facilities and Personnel in Work of J. D. Ross Memorial Safety Award Committee</p> <p>A-134 Validity of Exchange Fees Made by Banks for Clearing or Collecting Government Checks Payable to the Order of REA Borrowers</p> <p>A-135 Necessity for Town of Hysham, Montana, to Hold Election Prior to (1) Disposing of Electric Plant and (2) Granting Permission to Cooperative to Erect Electric Distribution Lines Upon the Streets of the Town</p> <p>A-135-a Primary Steps in the Holding of an Election in the Town of Hysham, Montana</p> <p>A-136 Naming of Trustees in Oklahoma Articles of Conversion Does Not Fix the Number of Trustees So As to Prevent a Bylaw Provision for Increasing the Number, Though Such Increase Does Not Create a Vacancy</p> | <p>T-191 Taxation of Municipalities and Counties in Tennessee with Specific Reference to Tennessee 28A Henry and Tennessee 29 Weakley</p> <p>T-192 Tennessee Tax Digest</p> <p>T-193 Tax Work of Project Attorneys in the Various States</p> <p>T-194 Indiana Tax Digest</p> <p>T-195 Texas Unemployment Compensation Tax</p> <p>T-196 Application of Michigan Use Tax to Michigan 40B Allegan</p> <p>T-197 Kansas Unemployment Compensation Tax</p> <p>T-198 Non-Application of Wyoming Sales Tax to REA Projects</p> <p>T-199 Michigan Tax Digest</p> <p>T-200 Pennsylvania Tax Digest</p> <p>T-201 Virginia Tax Digest</p> <p>T-202 Kentucky Tax Digest</p> |
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It should be noted that these Tax Digests are part of a series covering the 48 States and are subject to modification upon final consideration and review.

TAX MEMORANDA

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| <p>T-184 Wisconsin Tax Digest</p> <p>T-185 Texas Tax Digest</p> <p>T-186 1939 Amendments to the Social Security Act</p> <p>T-187 Liens Arising Under California Sales and Use Taxes</p> <p>T-188 Florida Tax Digest</p> <p>T-189 Federal Incorporation and the Pittman Case</p> <p>T-190 Exemption from Federal Documentary Stamp Tax Under Section 101 of the Revenue Act of 1938</p> | <p><u>RECENT ADDITIONS TO LAW LIBRARY</u></p> <p>1939 Pocket Parks to Purdon's Pennsylvania Statutes Annotated</p> <p>Stearns, Law of Suretyship (4th Ed. 1934)</p> <p>Winslow's Forms of Pleading and Practice (3d Ed. 1934) -- Seven Volumes</p> |
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